WONG KOON SENG

v.

RAHMAN HYDRAULIC TIN BHD & ORS

HIGH COURT MALAYA, KUALA LUMPUR
FAIZA TAMBY CHIK J
[ORIGINATING MOTION NO: R2-25-90-2002]
28 OCTOBER 2002

ADMINISTRATIVE LAW: *Remedies - Certiorari and mandamus - Application for leave - Time limit - Whether failure to file within time limit rendered application irregular - Rules of the High Court 1980, O. 53 r. 6*

ADMINISTRATIVE LAW: *Judicial review - Certiorari and mandamus - Application for - Alleged infringement of applicant's private rights - Whether application misconceived as applicant could only rely on private law remedies - Whether judicial review only applicable to matters relating to public law*

ADMINISTRATIVE LAW: *Remedies - Certiorari and mandamus - Application for - Whether application contravened s. 39A of the Pengurusan Danaharta Nasional Berhad Act 1998 - Whether prayers sought for barred by s. 72 of the Pengurusan Danaharta Nasional Berhad Act 1998 - Pengurusan Danaharta Nasional Act 1998, ss. 39A, 72*

The second to fourth respondents ('the respondents') were appointed by Pengurusan Danaharta Nasional Bhd as special administrators of the borrower to examine and consider how to deal with the disposal of the borrower's assets in order to maximise the returns and to restructure the borrower company. The applicant offered RM6,003,000 for the acquisition of the borrower's mining lease and related assets ('the assets concerned'). The respondents rejected the applicant's offer and accepted instead a subsequent proposal from Fook Wan Thye Credit & Leasing Sdn Bhd of RM14,000,300 for the assets concerned ('Fook Wan Thye's offer'). The applicant then filed this application seeking the following reliefs: (1) a *certiorari* order to quash the respondents' rejection of the applicant's offer; (2) a *certiorari* order to quash the respondents' acceptance of Fook Wan Thye's offer; (3) a *mandamus* order that the assets concerned be awarded to the applicant; and (4) a *mandamus* order that the respondents do reconsider the applicant's offer once more.

Held:

[1] The application herein was irregular in view of the fact that the application for leave for the same was not filed within the time limit prescribed under O. 53 r. 3(6) of the Rules of the High Court 1980 ('RHC'), and in the absence of any court order allowing for an extension of time, the application was misconceived and ought to be dismissed outright. (p 210 b-d)

[2] Although the respondents were appointed under the provisions of the Pengurusan Danaharta Nasional Berhad Act 1998 ('Danaharta Act') and thereby had the powers specified in the Second Schedule thereto, their decisions in rejecting the applicant's offer and accepting Fook Wan Thye's offer were commercial decisions taken for and on behalf of the first respondent as a private entity, or more particularly, a business entity. These decisions were made in the field of "private law" in accordance with the spirit of "freedom to contract" and certainly did not have any character of public law, and therefore, should not be subject to judicial review. The applicant could only rely on private law remedies in respect of the alleged infringement of private rights. Judicial review ought only to apply to matters relating to public law and ought not to be made available for enforcement of private rights. (pp 211 d-e & 213 d)

[3] The filing of the application was itself clearly in contravention of s. 39A of the Danaharta Act as it sought to "obstruct or hinder" the exercise of the right and power conferred on the respondents as special administrators under the Danaharta Act. Furthermore, the prayers sought for in the application were absolutely barred by s. 72 of the Danaharta Act. (p 215 e-f)

[Application dismissed.]

Case(s) referred to:

Ganda Oil Industries Sdn Bhd & Ors v. The Kuala Lumpur Commodity Exchange & Anor [1988] 1 CLJ 126; [1988] 1 CLJ (Rep) 56 ***(refd)***

Kekatong Sdn Bhd v. Bumiputra-Commerce Bank Berhad & & Anor [2002] 7 CLJ 175 ***(foll)***

Mersing Omnibus Co Sdn Bhd v. Minister of Labour and Manpower & Anor [1983] 2 MLJ 54 ***(foll)***

R v. Panel on Takeovers and Mergers, ex p Datafin Plc And Another [1987] 1 All ER 564 ***(refd)***

Ravindran v. Malaysian Examinations Council [1984] 1 MLJ 168 ***(foll)***

Tan Sri Dato' Tajuddin Ramly v. Pengurusan Danaharta Sdn Bhd & Anor [2002] 2 CLJ 758 ***(foll)***

Woon Kwok Cheng v. Tan Sri Datuk Chang Min Tat & Ors [1993] 2 CLJ 391 ***(refd)***

Legislation referred to:

Pengurusan Danaharta Nasional Berhad Act, ss. 21(a), 30, 31, 32, 39A(1), 72(b), (c)

Rules of the High Court 1980, O. 53 rr. 2(4), 3(6)

For the applicant - Puravalen (Jeev Anand & Mazlan Mohd Nor); M/s How, Zul & Low

For the respondents - Dato' Dr Cyrus Das (Yoong Sin Min & Lau Kee Sern); M/s Shook Lin & Bok

Reported by Suresh Nathan

JUDGMENT

Faiza Tamby Chik J:

The brief chronology of events of the instant case is as follows: The borrower was granted credit facilities of RM250 million by a syndication of lenders comprising MBf Finance Berhad and MBf Leasing Sdn Bhd ("the lenders") pursuant to a facility agreement dated 24 June 1997. The borrower had defaulted under the said credit facilities. Pursuant to the Pengurusan Danaharta Bhd Act 1998 ("the Danaharta Act") and the vesting certificate (exh. "WLW1" to respondent's Wong affidavit – p. 51), all the rights, assets and interests of the lenders in connection with the borrower's said credit facilities and security documents were acquired by and vested into Pengurusan Danaharta Nasional Bhd ("Danaharta") as of 24 April 2000. Consequent upon such vesting, Danaharta appointed the 2nd to 4th respondents as special administrators of the borrower on 16 June 2000. The 2nd to 4th respondents in their duties as special administrators of the borrower had examined the assets of the borrower and considered how to deal with the disposal of the assets of the borrower to maximize the returns and to restructure the borrower company. On or about 26 February 2002, by various press articles, the 2nd to 4th respondents invited all potential investors to attend a briefing scheduled for 1 March 2002 on the procedure for submission of their proposals to restructure and/or acquire the borrower's assets ("the 1st Invitation") (exh. "WLW2" to respondent's Wong affidavit – p. 56). The borrower's assets to be acquired included, *inter alia*, the borrower's mining lease and related assets ("the assets concerned"). Following from the 1st invitation, various interested parties including the applicant attended the scheduled briefing on 1 March 2002. At the said briefing, copies of the information memorandum dated 1 March 2002 ("the 1st MOI") (exh. "WLW3" to the respondent's Wong affidavit – p. 62) were given to various interested parties, including the applicant at their request and upon them signing the confidentiality agreement (exh. "WLW4" to the respondent's Wong affidavit – p. 312).

Pursuant to the express terms of the 1st MOI, it is provided, *inter alia*, that:

(a) the 1st MOI does not constitute an offer by the 2nd to 4th respondents (see: cover p. 62 and p. 70 of exh. "WLW3");

(b) the various dates as set out therein, except for the closing date for submission which has been fixed for 18 March 2002 ("the closing date"), are tentative in nature and may be altered by the 2nd to 4th respondents after consultation with Danaharta (see p. 71 of exh. WLW3);

(c) the 2nd to 4th respondents are not bound to accept any of the proposals submitted (see p. 84 of exh. "WLW3"); and

(d) the 2nd to 4th respondents are under no obligation to provide any explanation for their decisions and such decisions shall be final (see p. 84 of exh. "WLW3").

On the closing date, a total of six proposals were received by the 2nd to 4th respondents offering to purchase a variety of the borrower's assets. The applicant's proposal dated 18 March 2002 was offered for the acquisition of the assets concerned with an offer price of RM6,003,000 ("the applicant's offer") (exh. "WLW5" of respondent's Wong affidavit – p. 314). It is expressly provided at para. 2 of the applicant's offer that "in the event that this offer is accepted by the special administrator ...", which pre-supposes an acceptance by the respondents is required. After due deliberation and by a letter dated 30 April 2002 (exh. "WLW6" of respondent's Wong affidavit – p. 319), the 3rd respondent on behalf of the borrower rejected the applicant's officer and returned therewith the applicant's unnegotiated Bankers Cheque No: RHB 072964 for the sum of RM120,060. The reason for the rejection was that the respondents' felt that the applicant's offer made was too low for the assets concerned. The applicant had requested the 2nd to 4th respondents to reconsider their decision to reject this offer. The 2nd to 4th respondents were however not prepared to do so, despite the applicant's meeting with them and with Danaharta on various occasions. Subsequent to the aforesaid rejection of the applicant's offer, a further briefing was fixed for 8 May 2002 whereby the applicant and others were invited to submit fresh offers for the acquisition of the assets concerned. The said briefing was however cancelled on 8 May 2002. Thereafter, an advertisement was placed in the newspapers on 5 July 2002 (exh. "WLW8" to respondent's Wong affidavit – p. 323) by the 2nd to 4th respondents wherein all interested parties were invited to submit their offers for the acquisition of the 1st respondent's operating tin mine with a right to enter, occupy and mine on an "as is where is basis" ("the 2nd invitation"). It is not disputed that these assets are the same as the assets concerned (see exh. "WLW9" for information memorandum dated 5 July 2002 ("the 2nd MOT" – p. 325). In addition to the aforesaid advertisement published on 5 July 2002,

the 2nd to 4th respondents had by their letter of 5 July 2002 (exh. "WLW10" to respondent's Wong affidavit – p. 405) extended their invitation to the applicant to submit his fresh offer for the acquisition of the assets concerned. On 18 July 2002, a total of three proposals were received by the 2nd to 4th respondents including a proposal dated 18 July 2002 from Fook Wan Thye Credit & Leasing Sdn Bhd with an offer price of RM14,000,300 ("Fook Wan Thye's offer") (exh. WLW11 see p. 408). The applicant did not submit any offer. The other two offers made were for RM12,000,888.99 and RM11,500,000 respectively. Contrast this to the applicant's initial offer of RM6,003,000. By a letter dated 30 July 2002 (exh. "WLW12" to respondent's Wong affidavit – p. 412), the 2nd to 4th respondents accepted the Fook Wan Thye's proposal. Pursuant to the Kuala Lumpur Stock Exchange Listing Requirements, an announcement was made on 1 August 2002 by the 2nd to 4th respondents to the Kuala Lumpur Stock Exchange on the 2nd to 4th respondents' acceptance of the Fook Wan Thye's offer (exh. "WLW14" – p. 419). The applicant does not dispute any of the above.

Pursuant to the court order dated 22 August 2002, the application herein was filed seeking for the following reliefs:

(a) a *certiorari* order to quash the respondents' rejection of the applicant's offer;

(b) a *certiorari* order to quash the respondents' acceptance of Fook Wan Thye's offer;

(c) a *mandamus* order that the mining lease and related assets of the borrower be awarded to the applicant pursuant to the terms of the memorandum of information dated 1 March 2002; or

(d) a *mandamus* order that the respondents do reconsider the applicant's offer once more.

The issues involved in the present application are as follows:

(a) whether the application herein is regular in view of the fact that the *ex parte* application for leave for the same was not filed within time prescribed under O. 53 r. 3(6) of the Rules of the High Court 1980;

(b) whether the 2nd to 4th respondents' being special administrators appointed under the provisions of the Danaharta Act are "public authorities" within the scope of O. 53 r. 2(4) of the Rules of the High Court 1980 ("RHC 1980");

(c) whether this court can grant the various orders sought for in the said application in the light of s. 39A and s. 72 of the Danaharta Act; and

(d) whether the facts of the present case entitle the applicant to the remedies sought for.

I am of the opinion that the application herein is irregular in view of the fact that the application for leave for the same was not filed within the time prescribed under O. 53 r. 3(6) of the RHC 1980. Order 53 r. 3(6) of the RHC 1980 provides:

> An application for judicial review shall be made promptly and in any event within 40 days from the date when grounds for the application first arose or when the decision is first communicated to the applicant provided that the Court may, upon application and if it considers that there is a good reason for doing so, extend the period of 40 days.

The applicant's offer was rejected by the 2nd to 4th respondents by a letter dated 30 April 2002 ("exh. WLW6" – p. 319 of respondent's Wong affidavit). Accordingly, the application herein ought to have been filed on or before 9 June 2002. The fact that it was only filed on 9 August 2002 clearly shows that there was a delay of two calendar months. In the absence of any court order allowing for extension of time, the application herein is misconceived and ought to be dismissed outright by this court. The authorities for the above proposition are found from the following cases:

(i) Federal Court decision of *Mersing Omnibus Co Sdn Bhd v. Minister of Labour and Manpower & Anor* [1983] 2 MLJ 54 – filing within time is essential;

(ii) Federal Court decision of *Ravindran v. Malaysian Examinations Council* [1984] 1 MLJ 168 – in absence of leave, no application properly before court.

It is clear from the above cases that the court has no jurisdiction to hear an application for judicial review if the same has been filed out of time even if leave to apply for the same has been so granted by the court. In the premises, I am of the view that the court has no jurisdiction to hear the application herein as it was filed without a court order for extension of time and would therefore be hereby dismissed with costs.

Can the 2nd to 4th respondents be properly classified as "public authority" within the ambit of O. 53 of the RHC 1980? I think the 2nd to 4th respondents being special administrators appointed under the provisions of Danaharta Act are not "public authority" within the scope of O. 53 r. 2(4) of RHC 1980. Order 53 r. 2(4) of RHC 1980 provides: "Any person who is adversely affected by the decision of any public authority shall be entitled to make the application."

Section 32 of the Danaharta Act clearly provides: "The Special Administrator shall, in the administration of the affected person, be deemed to be acting as the agent of the affected person."

"Affected person" is defined by s. 21(a) of the Danaharta Act to mean "any company owing a duty or liability under a credit facility to the (Danaharta) or any subsidiary of the (Danaharta), whether present, future, vested or contingent".

In the instant case, the 1st respondent is an "affected person" and is a limited company duly incorporated under the provisions of the Companies Act 1965. It is therefore a private entity and not a public authority. It follows that the 2nd to 4th respondents, are deemed in law as agents of the 1st respondent, are therefore agents of a private entity. This fact was acknowledged by the applicant when he made the borrower company the 1st respondent in his application, as he acknowledged that the 2nd to 4th respondents could only enter a contract with him through the 1st respondent. In the instant case, although the 2nd to 4th respondents have been appointed under the provisions of the Danaharta Act and thereby shall have the powers as specified in Second Schedule thereto, their decisions in rejecting the applicant's offer and accepting Fook Wan Thye's offer are commercial decisions taken for and on behalf of the 1st respondent as a private entity, or more particularly, a "business" entity. These decisions were made in the field of "private law" in accordance with the spirit of "freedom to contract" and certainly do not have any character of public law. In the premises, I am of the view that the respondents' decisions are not and should not be subject to judicial review. In the English Court of Appeal decision of *R v. Panel on Takeovers and Mergers, ex parte Datafin Plc And Another (Norton Opax Plc And Another Intervening)* [1987] 1 All ER 564, at p. 583, Lloyd LJ said:

> So I turn to counsel for the panel's more technical argument. He starts with the speech of Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service* [1984] 3 All ER 935 at 949-950, [1985] AC 374 at 409:
>
> > For a decision to be susceptible to judicial review the decision-maker must be empowered by public law (and not merely, as in arbitration, by agreement between private parties) to make decisions that, if validly made, will lead to administrative action or abstention from action by an authority endowed by law with executive powers, which have one or other of the consequences mentioned in the preceding paragraph. The ultimate source of the decision-making power is nearly always nowadays a statute or subordinate legislation made under the statute; but in the absence of any statute regulating the subject matter of the decision the source of the decision-making power may still be the common law itself, ie, that part of the common law that is given by lawyers the label of

> "the prerogative". Where this is the source of decision-making power, the power is confined to executive officers of central as distinct from local government and in constitutional practice is generally exercised by those holding ministerial rank.

On the basis of that speech, and other cases to which he referred us, counsel for the panel argues (i) that the sole test whether the body of persons is subject to judicial review is the source of its power, and (ii) that there has been no case where that source has been other than legislation, including subordinate legislation, or the prerogative.

I do not agree that the source of the power is the sole test whether a body is subject to judicial review, nor do I so read Lord Diplock's speech. Of course the source of the power will often, perhaps usually, be decisive. If the source of power is a statute, or subordinate legislation under a statute, then clearly the body in question will be subject to judicial review. If, at the other end of the scale, the source of power is contractual, as in the case of private arbitration, then clearly the arbitrator is not subject to judicial review: see *R v. Disputes Committee of the National Joint Council of the Craft of Dental Technicians, ex p Neate* [1953] 1 All ER 327, [1953] 1 QB 704.

But in between these extremes there is an area in which it is helpful to look not just at the source of the power but at the nature of the power. If the body in question is exercising public functions, or if the exercise of its functions have public law consequences, then that may, as counsel for the applicants submitted, be sufficient to bring the body within the reach of judicial review. It may be said that to refer to 'public law' in this context is to beg the question. But I do not think it does. The essential distinction, which runs through all the cases to which we referred, is between a domestic or private tribunal on the one hand and a body of persons who are under some public duty on the other. Thus in *R v. Criminal Injuries Compensation Board, ex p Lain* [1967] 2 All ER 770 at 778, [1967] 2 QB 864 Lord Parker CJ, after tracing the development of *certiorari* from its earliest days, said:

> The only constant limits throughout were that the body concerned was under a duty to act judicially and that it was performing a public duty. Private or domestic tribunals have always been outside the scope of *certiorari* since their authority is derived solely from contract, that is from the agreement of the parties concerned.

To the same effect is a passage from a speech of Lord Parker CJ in an earlier case, to which we were not, I think, referred, namely *R v. Industrial Court, ex p ASSET* [1964] 3 All ER 130 at 136, [1965] 1 QB 377 at 389:

> It has been urged on us that really this arbitral tribunal is not a private arbitral tribunal, but that, in effect, it is undertaking a public duty or a quasi-public duty and, as such, is amendable to an order of *mandamus*. For my part, I am quite unable to come to that conclusion.

> It is abundantly clear that they had no duty to undertake the reference. If they had refused to undertake the reference they could not be compelled to do so. I do not think that the position is in any way different once they have undertaken the reference. They are clearly doing something which they were not under any public duty to do, and, in those circumstances, I see no jurisdiction in this court to issue an order of *mandamus* to the Industrial Court.

In addition, I think in seeking a court order to compel the 2nd to 4th respondents to award the mining lease and related assets of the 1st respondent to the applicant pursuant to the terms of the 1st MOI (see prayer (c) of encl. 1), the applicant is clearly attempting to impose and enforce his purported contractual or "private right" against the respondents. If the applicant maintains there is a contract, then his claim ought to have been for damages for breach of contract filed against the respondents. The applicant's prayers for a *mandamus* and *certiorari* are in essence prayers for specific performance and an injunction, remedies which are available in private law. The applicant can only rely on private law remedies in respect of the alleged infringement of private rights. Judicial review ought only to apply to matters relating to public law and ought not be made available for enforcement of private rights: (see *Woon Kwok Cheng v. Tan Sri Datuk Chang Min Tat & 15 Ors* [1993] 2 CLJ 391; *Ganda Oil Industries Sdn Bhd & Ors v. The Kuala Lumpur Commodity Exchange & Anor* [1988] 1 CLJ 126; [1988] 1 CLJ (Rep) 56). I therefore conclude that the application herein is misconceived and ought to be dismissed by this court and I hereby do so.

It is observed that the 2nd to 4th respondents have expressly made known to the applicant the following terms:

(a) the 1st MOI does not constitute an offer by the 2nd to the four respondents;

(b) the various dates as set out therein, except for the closing date for submission which has been fixed for 18 March 2002 ("the closing date") are tentative in nature and may be altered by 2nd to 4th respondents after consultation with Danaharta;

(c) the 2nd to 4th respondents are not bound to accept any of the proposals submitted; and

(d) the 2nd to 4th respondents are under no obligation to provide any explanation for their decisions and as such the decisions shall be final.

The applicant's offer acknowledged the above and although it was the only offer for the assets concerned, for a contract to take place, it had to be accepted by the 2nd to 4th respondents. No such acceptance took place and the applicant cannot show a clear and unequivocal acceptance by the respondents. The

subsequent offer prices for the acquisition of the assets concerned received by the 2nd to the 4th respondents are much higher (in fact, more than double) that the applicant's offer. This vindicated the 2nd to 4th respondents' decision not to accept the applicant's offer as they had held the view that his offer was too low. Subsequent to the rejection of the applicant's offer, the applicant had been invited to tender his fresh offer to acquire the assets concerned but the applicant chose not to avail himself of such opportunity. The 2nd to 4th respondents would have been grossly negligent to the 1st respondent's shareholders and creditors, including Danaharta, if they accepted the offer for the assets concerned at such gross undervalue. Based 0:1 the above, the 2nd to 4th respondents were correct in rejecting the applicant's offer and thereafter conducting fresh invitations for the acquisition of the assets concerned. It is entirely logical and reasonable for the 2nd to 4th respondents to accept Fook Wan Thye Sdn Bhd's offer of RM14,000,300. The applicant's unreasonable refusal to partake in the subsequent exercise clearly demonstrates his lack of *bona fides*. The only basis for the applicant clinging on to the argument that the 2nd to 4 respondents were obliged to accept his offer was the issue of the return of his deposit. The deposit, as stated by affidavit, was to have been collected by the applicant at the 2nd to 4th respondent's office as requested by him. The applicant deliberately refused to so collect the same and is now unconscionably relying on his own inaction to justify this application. The court ought not to condone such action. There is no basis in fact and in law to quash the 2nd to 4th respondents' decisions and to further compel the 2nd to 4th respondents to accept or reconsider the application offer which has been validly rejected. The Danaharta Act provides special laws for the acquisition by Danaharta of liabilities and assets and managing and disposing them as well as for appointment of special administrators with special powers. The intentions of the Danaharta Act as seen in its preamble are, *inter alia*, as follows:

(a) to assist financial institutions by removing impaired assets, to assist the business sector by dealing expeditiously with financially distressed enterprises and to promote the revitalisation of the nation's economy by injecting liquidity into the financial system, such goals to be achieved through the acquisition, management, financing and disposition of assets and liabilities;

(b) to promptly, efficiently and economically implement the acquisition, management, financing and disposition of assets and liabilities;

(c) to expeditiously appoint special administrators to administer and manage persons whose assets or liabilities have been so acquired.

The special administrators once appointed by Danaharta, shall take over the management and control of the 1st respondent company (see s. 31 of the Danaharta Act). The special administrators' powers are set out in s. 30 and in the Second Schedule of the Danaharta Act. In this regard, s. 39A(1) of the Danaharta Act provides that no person shall obstruct or hinder the exercise of any right or power by a special administrator. Section 72 of the Danaharta Act further provides that notwithstanding any law, an order of court cannot be granted which:

(a) stays, restrains or affects the powers of, *inter alia*, the special administrators;

(b) stays, restrains or affects any action taken or proposed to be taken by, *inter alia*, the special administrators;

(d) compels the special administrators to do or perform any act.

The application herein seeks for orders of court to quash the 2nd to 4th respondents' decision in rejecting the applicant's offer and the 2nd to 4th respondents' decision in accepting Fook Wan Thye's offer with further prayers for *mandamus* orders for the 2nd to 4th respondents to accept or reconsider the applicant's offer. Firstly, I am of the opinion that the filing of the application herein is itself clearly in contravention of s. 39A of the Danaharta Act as it seeks to "obstruct or hinder" the exercise of the right and power conferred on the 2nd to 4th respondents as special administrators under the Danaharta Act. Secondly, the court is unable to grant the orders as prayed by reason of the prohibition of s. 72 of the Danaharta Act. An order of court in quashing the 2nd to 4th respondents' decisions will certainly 'restrain or affect action taken' which is expressly prohibited by s. 72(b) of the Danaharta Act. Also, a *mandamus* order compelling the 2nd to 4th respondents to award the mining lease and related assets to the applicant will obviously contravene s. 72(c) of the Danaharta Act. The provision of s. 72 has been previously considered by the courts. Firstly, there is the recent High Court decision of *Tan Sri Dato' Tajuddin Ramly v. Pengurusan Danaharta Sdn Bhd & Anor* [2002] 2 CLJ 758. This involves a case where the plaintiff there sought an injunction against Danaharta. Section. 72 of the Danaharta Act was considered extensively and it was held that s. 72 precludes the court from granting any restraining order against Danaharta. Vincent Ng J commented that:

> It is incontrovertible that s. 72 constituted a caveat against the granting of a restraining order directed at the courts ... Thus, in the present case I would hold that this court is precluded by the expressed crystal clear provision in s. 72 from granting the injunction or restraining order sought by the plaintiff.

Although the above case involves an injunction application, the principles therein are applicable as s. 72 bars court orders granting not only injunctions but also *certiorari* and *mandamus* orders as well. In *Kekatong Sdn Bhd v. Bumiputra-Commerce Bank Berhad & Anor* [2002] 7 CLJ 175 it was held that s. 72 of the Danaharta Act prohibits the granting of an injunction to restrain the sale of charged land by Danaharta Urus:

> The wordings of s. 72 are very clear and contains no ambiguity as to its meaning and intention. In the absence of any ambiguity it is incumbent upon this court to give its literal meaning.

In the premises, I am of the view that the prayers sought for in the application are absolutely barred by s. 72 of the Danaharta Act.

This application is clearly *mala fides* and it hinders the ongoing disposal of assets excercise by the 2nd to 4th respondents. This defeats the intention of Parliament which has decreed that Danaharta and the special administrators must be permitted to realise the borrowers' assets without hindrance and had passed very clear express statutory provisions towards this effect. The application herein is exactly the kind of proceedings which the Danaharta Act seeks to bar. It must be noted that the success of the asset management company depends on speed. They were given wide powers because of the public benefit and Parliament recognised the need for special powers in the public interest and for the public good.

The application is hereby dismissed with costs.